IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 12551 of 2007(T)

PETITIONER:

C.P.KUNHUNNI GUPTAN, S/O APPU GUPTAN,
AGED 57 YEARS,LOWER PRIMARY SCHOOL ASSISTANT(RETD)
AIDED BASIC LOWER PRIMARY SCHOOL TRIPALAMUNDA
(RESIDING AT CHEENGATH PALLOTTIL, P.O.PALODE,
MANNARKKAD, PALAKKAD DISTRICT)

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

1. THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION, JAGATHY, TRIVANDRUM.

3. THE DEPUTY DIRECTOR OF EDUCATION, PALAKKAD DISTRICT.

4. THE ASSISTANT EDUCATIONAL OFFICER, PARLI, PALAKKAD DISTRICT.

5. THE HEADMASTER, AIDED BASIC LOWER PRIMARY SCHOOL, TRIPALAMUNDA, P.O.PARASSERY, KONGADU, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER SMT.LAKSHMI RANI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

A.K.BASHEER, J.

W.P.(C)No.12551 OF 2007

Dated this the 30th day of May, 2007

JUDGMENT

Having heard learned counsel for the petitioner and the learned Government Pleader, and having perused the materials on record, I am of the view that this writ petition can be disposed of with appropriate directions without issuing notice to the respondents.

2. Petitioner is a retired Lower Primary School Assistant. According to him, he entered into service in the year 1977. It is the admitted position that the petitioner was placed under suspension with effect from September 22, 1992 while he was working as Headmaster. The period of suspension continued till March 20, 2005. It appears that the department had thereafter imposed a punishment of compulsory retirement from service on the petitioner in the year 2003. The said order was reconsidered by the Government. While passing Ext.P1 order reinstating the petitioner in service, the Government held thus:

> "Government have examined the matter in detail. It cannot be considered that the petitioner is not guilty of the charges and the Deputy Director of Education is not

> having authority to initiate disciplinary action against the teacher as per rules. But Government do not think that the charges are very grave in nature warranting the harsh penalty of compulsory retirement from service. The prolonged period of suspension is also not fully justifiable. In the circumstances by invoking Rule 92 Chapter XIV of KER by setting aside the order of DDE dated 02-07-2003, Government reduce the penalty of compulsory retirement from service awarded to the petitioner by the Deputy Director of Education to a penalty of reduction to the next lower rank of LPSA. The petitioner is reinstated in service forthwith. Orders regarding the regularisation of the period of suspension and the period of compulsory retirement from service will be issued separately"

3. Thus, it is borne out by record that petitioner remained out of service from September 22, 1992 till March 20, 2005. It is also the admitted position that petitioner retired from service on April 30, 2005.

4. By order dated March 27, 2006, a copy of which is on record as Ext.P2, the Government ordered to regularise the period of absence of the petitioner from September 22, 1992 to March 20, 2005 "as non-duty without forfeiture of his past service".

5. The above order was challenged by the petitioner in writ petition No.24505/06. This court directed the Government to reconsider the matter after setting aside Ext.P2. Thereafter the

Government passed Ext.P4 order confirming Ext.P2. The said order is impugned in this writ petition. Petitioner also prays for issuance of a writ of mandamus or such other writ or direction to the respondents to grant "full pay and allowance from the date of suspension till the date of retirement less amount already paid". The 3rd prayer in the writ petition is to issue an appropriate direction to the respondents "to grant pensionary benefits including pension, commuted value of pension, DCRG and Provident Fund amount with interest."

6. I have carefully perused Ext.P4 which is impugned in the writ petition. It is pertinent to note that petitioner was not totally exonerated from the charges levelled against him. The Government had of course shown some indulgence. It was only for that reason, he was ordered to be reinstated. It was made clear in Ext.P2 order itself that the period during which petitioner remained out of service shall be treated as "non-duty without forfeiture of his past services". One reason which apparently persuaded the Government to take a lenient view was that petitioner had remained out of service for well over a decade, and also that he was about to superannuate. In my view

the sympathy shown by the Government was in fact more than what the petitioner actually deserved.

7. In the peculiar facts and circumstances, I do not find any reason to interfere with the order impugned in this writ petition. At any rate, petitioner shall not be entitled to get full pay and allowances from the date of suspension till the date of his reinstatement. As regards the pensionary benefits, I am of the view that petitioner would be entitled to get the same as provided under the rules. It will be open to the petitioner to make a motion before the appropriate authority in which event an appropriate decision shall be taken by the authority as expeditiously as possible, at any rate, within three months from the date of receipt thereof. It shall also be ensured that petitioner is paid the entire dues within one month from the date of the order that may be passed as directed.

Writ petition is disposed of in the above terms.

A.K.BASHEER, JUDGE

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